

# Agenda Item Form

Agenda Date: 07/07/2004 ADN

Districts Affected: All

Dept. Head/Contact Information: Christian Gerstheimer X: 20 or Amy Grimm X: 14

## Type of Agenda Item:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Resolution            | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements       | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use     | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements            | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input type="checkbox"/> Other _____                      |   |  |

## Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: \_\_\_\_\_ Months)
- ☒ Other Source: Loan of art to El Paso Museum of Art

## Legal:

- ☒ Legal Review Required      Attorney Assigned (please scroll down): John Nance      ☒ Approved      ☐ Denied

Timeline Priority:   ☐ High      ☒ Medium      ☐ Low      # of days: \_\_\_\_\_

## Why is this item necessary:

That the Director of the El Paso Museum of Art be authorized to sign an Incoming Loan Agreement for the exhibition "Light from the Sky: A Tom Lea Retrospective, 1907-1997."

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

None

## Statutory or Citizen Concerns:

None

## Departmental Concerns:

None

## RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Director of the El Paso Museum of Art be authorized to sign an Incoming Loan Agreement on behalf of the City of El Paso, for the exhibition "***Light from the Sky: A Tom Lea Retrospective, 1907-1997***," March 1, 2006 – April 17, 2006, organized by Exhibits USA, Kansas City, Missouri. Participation fee is \$5,300.00 plus shipping fee, which is to be determined.

ADOPTED this 7<sup>th</sup> day of July, 2004.

CITY OF EL PASO:

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Joe Wardy  
Mayor

ATTEST:

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Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:



John F. Nance  
Assistant City Attorney

APPROVED AS TO CONTENT:



Becky Duval Reese, Director  
El Paso Museum of Art

June 29, 2004

TO: Mayor and City Council

FROM: Becky Duval Reese 

RE: Loan

The El Paso Museum of Art requests that the Director of the El Paso Museum of Art be authorized to sign an Incoming Loan Agreement on behalf of the City of El Paso, for the exhibition "***Light from the Sky: A Tom Lea Retrospective, 1907-1997,***" March 1, 2006 – April 17, 2006, organized by Exhibits USA, Kansas City, Missouri. Participation fee is \$5,300.00 plus shipping fee, which is yet to be determined.





Suite 700, 912 Baltimore Avenue  
Kansas City, Missouri 64105 816/421-1388

EXHIBITSUSA AGREEMENT Bookings - 41555  
PLEASE READ THOROUGHLY Fiscal Year 2006

THIS AGREEMENT, dated April 26, 2004, by and between Mid-America Arts Alliance, through its national division, ExhibitsUSA (hereinafter referred to as "ExhibitsUSA"), and

El Paso Museum of Art  
One Arts Festival Plaza  
El Paso, TX 79901  
(hereinafter referred to as "Exhibitor"),

WHEREAS, ExhibitsUSA wishes to make *Light from the Sky: A Tom Lea Retrospective, 1907-1997* available to selected exhibitors, and WHEREAS Exhibitor wishes to share *Light from the Sky: A Tom Lea Retrospective, 1907-1997* with its community, NOW, THEREFORE, in consideration of the mutual promises in this agreement, the parties above agree as follows:

#### 1. EXHIBITION, DATES

- a. Exhibitor agrees to host the exhibition **Light from the Sky: A Tom Lea Retrospective, 1907-1997** (hereinafter referred to as "Exhibition"), coordinated, subsidized, and available from ExhibitsUSA for the period beginning March 1, 2006 and ending April 17, 2006 and to accept and display the Exhibition under the condition stated herein.
- b. The Exhibitor shall not alter the incoming shipping date, opening display date, ending display date or outgoing shipping date without written permission from ExhibitsUSA.

#### 2. PROGRAM COST, EXHIBITION FEE, MANNER OF PAYMENT

- a. Exhibitor shall pay an Exhibition Fee of \$5,300.00 U.S. dollars.
- b. The full Program Cost to ExhibitsUSA of the Exhibitor's display of the Exhibition is \$28,292.00
- c. The portion of this fee not paid by the exhibitor is \$22,992.00. The portion of this fee not paid by the exhibitor is supported by grants to ExhibitsUSA from:

**The Texas Commission on the Arts  
The National Endowment for the Arts**

and other public and private contributions to ExhibitsUSA and Mid-America Arts Alliance. ExhibitsUSA's requirements for reporting to these funders are outlined in paragraph 4. Requirements for crediting these funders are outlined in paragraph 5.

- d. A 25% deposit of \$1,325.00 must be received with this signed Agreement. The balance of the Exhibition Fee is due in full on March 1, 2006. Checks should be made payable to ExhibitsUSA. Two invoices are attached to the ExhibitsUSA Agreement for your

**EXHIBITSUSA AGREEMENT: Light from the Sky: A Tom Lea Retrospective, 1907-1997**

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convenience.

- e. If ExhibitsUSA is not able to provide the Exhibition as described in this Agreement, the deposit will be returned in full to Exhibitor.
- f. If Exhibitor cannot fulfill the terms of the Agreement, the deposit will be forfeited and retained by ExhibitsUSA. Exhibitor may also be subject to cancellation provisions as provided in paragraph (10) of this Agreement.

### 3. SHIPPING

#### a. Incoming Shipping of Exhibition

1. Exhibitor will receive the Exhibition via fine art carrier from the previous exhibition site. Exhibitor will be responsible for providing personnel to assist with the unloading of the Exhibition. Exhibitor will not be responsible for incoming shipping costs and should contact ExhibitsUSA before accepting collect shipments.
2. ExhibitsUSA will make a good faith effort to facilitate the arrival of the Exhibition no later than 4 business days in advance of March 1, 2006. ExhibitsUSA shall not be held responsible for delays outside of its control.
3. If the Exhibition has not been received within four days prior to March 1, 2006, Exhibitor must contact ExhibitsUSA IMMEDIATELY.
4. In order to ensure that the Exhibition will be delivered to the proper location, Exhibitor must indicate below the shipping address to be used for transport. If this information is not provided, the Exhibition cannot be shipped.

#### INCOMING SHIPPING INFORMATION:

\_\_\_\_\_  
Name of Exhibitor

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

**LOADING DOCK? YES/NO (circle one)**

**IF YES, LOCATION:**

\_\_\_\_\_

EXHIBITSUSA AGREEMENT: *Light from the Sky: A Tom Lea Retrospective, 1907-1997*

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b. Outgoing Shipping of Exhibition **Fine Art**

1. Exhibitor will coordinate with ExhibitsUSA registrar and representative of the designated fine art carrier to transport the exhibition to the next exhibition site. Exhibitor is responsible for payment of its fixed-rate share of outgoing transportation charges. *The amount of the fixed-rate transportation charges will be determined upon completion of the booking of the exhibition tour and will be communicated to the Exhibitor in writing at the earliest possible date. Payment is due to ExhibitsUSA upon the opening of the exhibition.*
  2. Fixed-rate shipping includes the cost of inside delivery and pick up within 50 feet of the delivery truck to and from one location. Exhibitor will be liable for any additional charges incurred as a result of special services such as multiple delivery sites or pick up locations, *uncrating by shipping company, packing by shipping company, et cetera.*
  3. Fixed-rate shipping includes the cost of shipping within the United States. Exhibitors outside the United States will be liable for additional charges related to customs brokerage fees, and any additional costs incurred shipping the exhibition across international borders for **both incoming and outgoing shipping.**
  4. ExhibitsUSA will specify the name and address to which the Exhibition is to be shipped, as well as the date by which the Exhibition must arrive at the next exhibition site.
  5. Exhibitor will retain bill of lading receipts for a period of three weeks from the date of shipment.
  6. Exhibitor will be liable for any costs resulting from exhibitor's delay or failure to transport the exhibition in accordance with the provisions of this attachment.
- c. Exhibitor will be responsible for reasonable supervision and care of the Exhibition, crates, packing material and everything contained therein, from its incoming shipping until its outgoing shipping according to the timeline.

#### 4. PROJECT EVALUATION REPORT

By accepting the Exhibitions and grant specified in paragraph 2(c) **EXHIBITOR IS OBLIGATED TO THE SATISFACTORY COMPLETION AND SUBMISSION OF THE EXHIBITSUSA EVALUATION REPORT.** Exhibitor should be collecting information for this report as the program develops. ExhibitsUSA is required to provide evaluation reports to the funders in paragraph 2(c). Submission of any final report to a state arts agency does not satisfy this requirement. The Final Evaluation is due to ExhibitsUSA **NOT LATER THAN May 7, 2006.**

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## 5. CREDIT REQUIREMENTS

The program you are presenting is being made available to your community by ExhibitsUSA, which is supported by public agencies and private contributors. Our ability to raise funds for such programs is directly related to the credit acknowledgments you provide. **You are required to give proper credit to ExhibitsUSA and its funding sources in all promotional and educational materials.** This section provides you with the detailed credit language and how it is required to be used.

In the event ExhibitsUSA secures a sponsor for a particular program that affects your Exhibition, you may receive amended credit requirements.

### a. CREDIT PANELS:

When provided by ExhibitsUSA, all framed credit panels must be prominently displayed at or near the entrance to the Exhibition at all times.

### b. For NEWSPAPER ADS, ANNOUNCEMENTS, BROCHURES, INVITATIONS TO OPENINGS and other printed materials the following is required:

**A Program of ExhibitsUSA, a national division of Mid-America Arts Alliance with The Texas Commission on the Arts and The National Endowment for the Arts**

-OR-

**A Program of (ExhibitsUSA logo)  
with The Texas Commission on the Arts and The National Endowment for the Arts**

Type size should be consistent with the majority of the type in your materials and **never** smaller than eight (8) point type.

### c. For NEWS RELEASES:

ExhibitsUSA will provide credit language for news releases in the publicity kit that will arrive in advance of the Exhibition.

**Exhibitor's failure to meet the above credit requirements will jeopardize it's participation in future ExhibitsUSA programs.**

## 6. INSURANCE, CONDITION REPORTS, DAMAGES

- a. ExhibitsUSA will provide insurance coverage at its own cost for the complete contents of the Exhibition during transit, unpacking, installation, display, storage, dismantling, and repacking. Upon request, ExhibitsUSA will provide Exhibitor a bona fide certificate of insurance coverage, the contents of which shall remain confidential with Exhibitor and shall not be made public.
- b. Exhibitor will prepare and file a Condition Report with ExhibitsUSA at both the beginning

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and conclusion of the Exhibition on forms provided by ExhibitsUSA. The Condition Report book will arrive in the crates with the Exhibition.

- c. Exhibitor will also complete a checklist receipt, which will arrive in advance of the Exhibition, confirming safe arrival of all objects, and will return it to ExhibitsUSA within five (5) business days of the Exhibition arrival.
- d. Exhibitor will report any and all damages or losses to the Exhibition while in Exhibitor's custody immediately by telephone to ExhibitsUSA. Within 24 hours of discovery of damage or loss, Exhibitor will send a full written statement with photographs to ExhibitsUSA detailing the extent, time, place and circumstances of the damage or loss. All damaged materials must be left as discovered unless the Exhibitor is instructed by ExhibitsUSA to proceed otherwise or unless emergency measures are necessary to prevent further damage.

## 7. SECURITY REQUIREMENTS

The Exhibition referenced in the Agreement requires security precautions for its proper care, protection and maintenance. Exhibitor will provide the following minimum security requirements:

### Moderate D

#### (environment, furniture, and installation technique)

For exhibitions whose objects require consistent attention to environmental factors, trained museum staff for handling and display supervision, and display furniture.

- a. No food or drink in gallery or around artworks at any time
- b. Fire protection according to local ordinance
- c. Temperature and humidity-controlled crate storage
- d. Minimum 3 trained staff for incoming shipping, installation, de-installation, and outgoing shipping
- e. Limited-access gallery
- f. Exhibition locked after hours; alarms or night guards may also be required
- g. Total temperature control (gallery temperature maintained at constant 68–72°)
- h. Relative humidity of 45–55% at all times; no greater than 10% fluctuation in a 24-hour period
- i. No sunlight; light sources (including blocked windows) must have ultraviolet filters
- j. Display area light levels not to exceed 5 foot candles for textiles, watercolors and other works on paper, 20 foot candles for paintings on canvas. Gallery light level determined by most sensitive object in a multi-media exhibition



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k. Exhibitor must have or be able to produce display furniture including:

Locked cases for small objects

Vitrines on pedestals

Objects on the floor or on very large pedestals must have ropes or other barriers to keep public at least 40 inches from the objects at all times

1. Staff trained specifically for secure supervision of the Exhibition remain in the display area at all times while Exhibition is open to the public

## 8. RESPONSIBILITY, LIABILITY

a. Exhibitor is responsible for damages and costs of repairs to the Exhibition, crates, packing material and everything contained therein when such damages are the result of:

1. Exhibitor noncompliance of stipulated security precautions as outlined in section 7; or

2. The negligence of personnel selected by Exhibitor to assist in handling the Exhibition; or

3. Exhibitor's negligence in any respect to provide for and insure the safety and protection of the Exhibition.

4. Exhibitor does not adhere to damage reporting and other procedures identified in paragraph 6 hereof.

b. Exhibitor shall bear the full and complete burden of any and all liability to persons or property, other than the Exhibition and its crates, arising out of or incurred in connection with the program and shall absolve and hold harmless ExhibitsUSA from any and all such liability.

## 9. PHOTOGRAPHS

Photographs of the work contained in the Exhibition, or its unpacking, installation, dismantling, or repacking are prohibited unless specifically and solely for Exhibitor's reasonable publicity and promotional purposes for this showing of the Exhibition or for ExhibitsUSA.

## 10. CANCELLATION

Exhibitor may cancel its intention to display the Exhibition only upon written notice from Exhibitor, received and acknowledged by ExhibitsUSA, which shall be accompanied by a cancellation fee payable to Mid-America Arts Alliance in the amount of the full Exhibition Fee plus any costs for storing the Exhibition during the cancelled display period. Any deposit received by ExhibitsUSA shall be credited toward the cancellation fee. If, in the event of

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Exhibitor's cancellation, ExhibitsUSA is able to book the Exhibition with another exhibitor at the full fee, one-half of the Exhibition Fee will be returned to Exhibitor.

## 11. NON-PROFIT STATUS

Exhibitor affirms that it is legally incorporated with not-for-profit status as designated by the Internal Revenue Service, or is a unit of state, local or tribal government. Exhibitor agrees to notify ExhibitsUSA immediately of any alteration of this status which may occur prior to the conclusion of the Exhibition.

## 12. ASSURANCE OF COMPLIANCE

All ExhibitsUSA programs are made possible by support to Mid-America Arts Alliance from state and federal sources. As a result, exhibitors are required to comply with state and federal regulations as follows:

- a. Exhibitor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and where applicable, Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 et seq). Title VI, Section 504, and the Age Discrimination Act prohibit discrimination on the basis of race, color, national origin, handicap or age in any program or activity receiving ExhibitsUSA assistance. Title IX prohibits discrimination on the basis of sex in any education program receiving ExhibitsUSA assistance.
- b. Exhibitor's financial records and supporting documents (pertaining directly to the Exhibition) and all other records related to this ExhibitsUSA program shall be retained for a period of three years from the date of the Final Evaluation Report, or until a federal audit has been completed and any questions arising from it have been resolved, whichever is the lesser period. Exhibitor shall grant to ExhibitsUSA access to any pertinent books, documents, or other records kept by the Exhibitor to make audits or examinations as necessary.
- c. Exhibitor agrees to have its financial records examined by an independent auditor not less frequently than once every two years, consistent with requirements stated in federal Office of Management and Budget (OMB) Circular A-102, Attachment P, or Circular A-133, as applicable.
- d. Exhibitor shall not use federal or state funds provided by ExhibitsUSA or Mid-America Arts Alliance (if any) for purposes of lobbying to affect legislation of federal or state governments pursuant to United States Code, Section 1913.
- e. Exhibitor's Final Evaluation Report shall be prepared in compliance with cost principles as established in OMB Circular A-122 ("Cost Principles for Non-profit Organizations", Circular A-21 ("Cost Principles for Educational Institutions") or Circular A-87 ("Cost Principles for State and Local Governments"), as applicable.
- f. Exhibitor shall comply with the Drug-Free Workplace Act of 1988.

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- g. Exhibitor certifies that its organization and principals are not suspended or debarred by any federal agency.
- h. Exhibitor shall comply with 29 CFR Part 505 of the Department of Labor, which provides that (1) all professional performers and related or supporting professional personnel employed on projects or productions which are financed in whole or in part with ExhibitsUSA funds will be paid not less than the minimum compensation for persons employed in similar activities, and (2) no part of any project or production which is financed in whole or in part with ExhibitsUSA funds will be performed or engaged in under working conditions which are unsanitary or hazardous or dangerous to the health and safety of the employees engaged in such project or production.
- i. Exhibitor certifies that its organization has on file a Section 504 Self-Evaluation. If Exhibitor has not previously conducted this self-evaluation or wishes to update the results of previously conducted evaluations, it may contact the NEA's Office of Civil Rights, free of charge, for a copy of a Program Evaluation Workbook.

Copies of the above referenced federal guidelines can be obtained from the Office of Management and Budget or local libraries.

### 13. FUNDING DEFAULT, 'FORCE MAJEURE'

- a. In the event that any or all of the grants (as referenced in paragraph 2(a) above) or Exhibition fees to support the full cost of the Exhibition are not forthcoming to ExhibitsUSA, neither ExhibitsUSA nor Mid-America Arts Alliance nor Exhibitor shall be held liable and Mid-America Arts Alliance may amend or terminate this Agreement.
- b. Neither party will be held liable for any delay, adjournment or failure to perform the services and or comply with the understandings provided in this Agreement, in the event of war; riot; rebellion; electricity blackout; fire; flood; strike; lockout; labor difficulty; trade union action of any kind; action of the elements; accident; delay in transportation; laws, rules or regulations of any government authority having jurisdiction; or any other matter, events or conditions beyond the reasonable control of either of the parties, provided that the above list is not limitative and that it will not be necessary to establish whether any of these events or conditions affected only the parties to the present contract or whether they also affected third parties. The above events or conditions are hereafter referred to as Events of Force Majeure. This contract can be revoked totally or partially only if reasons of Force Majeure are present.
- c. If part or all of the Exhibition tour is canceled as a result of an Event of Force Majeure, then both parties will agree to hold the other completely harmless.

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## 14. GOVERNING LAW

The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Missouri.

## 15. BINDING EFFECT

This Agreement sets forth the full and complete understanding between ExhibitsUSA and Exhibitor and shall be binding upon ExhibitsUSA and Exhibitor, as well as their respective successors and assigns. Any questions or clarifications required by Exhibitor regarding this Agreement must be directed to ExhibitsUSA prior to the execution of this document by Exhibitor. This Agreement may be altered only in writing, signed by both parties, except as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement April 26, 2004.

EXHIBITSUSA, a national division  
of Mid-America Arts Alliance (M-AAA)

El Paso Museum of Art

By  By \_\_\_\_\_

Name: Lin Nelson-Mayson

Print Name \_\_\_\_\_

Title: Director of ExhibitsUSA

Title \_\_\_\_\_

Date April 26, 2004

Date \_\_\_\_\_

By \_\_\_\_\_

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

The following information is required for reporting to federal and state agencies. Please confirm accuracy.

U.S. Congressional District No:  
State House District No:

County Name: **El Paso**  
State Senate District No:



mid-america  
arts alliance

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Suite 700, 912 Baltimore Avenue  
Kansas City, Missouri 64105 816/421-1388

INVOICE NUMBER :  
Bookings-41555  
El Paso Museum of Art  
One Arts Festival Plaza  
El Paso, TX 79901

Attn: Becky Duval Reece

Date: April 26, 2004

EXHIBITSUSA FINAL INVOICE #1

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Exhibition Title: Light from the Sky: A Tom Lea Retrospective, 1907-1997

Exhibition Dates: March 1, 2006 to April 7, 2006

EXHIBITION FEE	\$5,300.00	
EXHIBITION FEE DEPOSIT	- \$1,325.00	By June 25, 2004
NET EXHIBITION FEE DUE	\$3,975.00	
FIXED RATE SHIPPING FEE	+ TBD	

TOTAL BALANCE DUE \$3,975.00 By March 1, 2006

Make check payable to ExhibitsUSA in U.S. dollars.

**INVOICE MUST ACCOMPANY CHECK**

SER: 1764

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Your prompt payment by the dates listed above is appreciated.

**PLEASE RETURN A WHITE COPY OF THE INVOICE WITH YOUR PAYMENT.  
THANK YOU.**